IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO No.5498 of 2006
Date of Decision: 15.1.2007

Munish Kumar

Appellant

versus

Kiran Bala and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE BALDEV SINGH

Present: Shri H.S.Dhindsa Advocate for the petitioner

Jasbir Singh, J. (Oral)

Appellant is the owner and driver of the vehicle, which caused accident, in which predecessor in interest of the claimants had died on 11.12.2004. The Motor Accident Claims Tribunal, Ludhiana (in short, the Tribunal), after analyzing evidence on record, regarding factum of accident, has observed thus:-

> *"After considering the submissions of ld. counsel for the parties, I am of the view that FIR, copy of which is Ex.P.11 was lodged on the statement of Subhash Chander against Dev Raj, driver of the truck in question. The claimants and Subhash Chander had no enmity with respondent Nos.1 and 2. There is no explanation as to why Subhash Chander lodged FIR against the truck of respondent No.2. Respondent No.1 has not stepped into the witness box. In case Bhagwani Devi vs. Krishan Kumar Saini and others, 1986 ACJ 331, it was held that cause of accident can be best explained by the driver*

concerned and if they were kept away from the witness box without sound reasons, it must be indeed be construed as a telling circumstances against the respondents. Since, there is no evidence led by the respondents to rebut the evidence of the claimants, so I am of the view that there is no ground to disbelieve the version of PW-2. Thus it is proved that respondent No.1 parked the truck in the center of the road and car in which Parvesh Kumar was traveling hit the parked truck and consequently, Parvesh Kumar Gupta received injuries and succumbed to the injuries. Thus, it is proved that Parvesh Kumar Gupta died in an accident due to rash and negligent driving of truck by respondent No.1, which was the direct cause of accident. This issue is accordingly decided in favour of the claimants and against the respondents."

We feel that the finding given above is perfectly justified. Appellant had not appeared in the witness box to rebut the allegations levelled against him. Furthermore, there is nothing on record to show that there was fog and because of that the appellant could not see truck parked in middle of the road. Furthermore, it has come on record that the deceased had died on account of accident caused by the appellant. No case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

January 15, 2007 **(Baldev Singh)**
gk **Judge**